



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JWK International Corporation

File: B-234994.2

Date: October 17, 1989

DIGEST

1. Contracting agency properly decided to award a cost-plus-fixed-fee contract to the offeror of the higher-rated, higher-cost proposal, where: (1) the solicitation emphasized that technical factors were considered substantially more important than cost; (2) the awardee's proposal was rated higher than the protester's in every technical evaluation factor; and (3) the awardee's evaluated cost-plus-fee was only slightly higher than the protester's.

2. Protest alleging that 1) evaluation panel member improperly gave the awardee information concerning in part the statement of work and evaluation criteria to be used before the solicitation was issued; and 2) procurement officials improperly gave awardee information from the protester's proposal before best and final offers were due is denied, where the Naval Investigative Service investigated the protester's charges and found no evidence of any wrongdoing by procurement officials, and there is no evidence in the protest record to support the protester's bare assertions.

DECISION

JWK International Corporation protests the Navy's award of a contract for technical and related services to Santa Barbara Applied Research, Inc. (SBAR), pursuant to request for proposals (RFP) No. N00123-89-R-0093. JWK contends that it should have been awarded the contract because it offered to perform the work at the lowest cost to the government. JWK also alleges that procurement officials provided details of JWK's technical and cost proposals to SBAR prior to submission of best and final offers (BAFOs). The protester further asserts that a member of the technical review panel gave SBAR information related to this solicitation, including the evaluation criteria to be used, before the RFP was issued.

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We deny the protest.

Issued by the Naval Regional Contracting Center for Detachment to 57 potential offerors on October 26, 1988, the RFP solicited offers to provide technical services for tasks relating to a number of weapon systems. The RFP contemplated a cost-plus-fixed-fee, level-of-effort, requirements contract for a base year and contained options for 2 additional years. The RFP indicated that the government would evaluate proposals on both technical merit and cost, and that technical factors were considered substantially more important than cost.

Three proposals were received by the November 28 closing date. Although the initial proposals of both JWK and SBAR were found to meet the minimum technical qualification standards, JWK's initial proposal was rated marginally acceptable while SBAR's initial proposal was rated fully acceptable.^{1/} Written discussions were conducted with JWK and SBAR, and the firms submitted BAFOs by the March 13, 1989, closing date. Evaluation of BAFOs resulted in SBAR's proposal being rated higher on technical factors, but JWK's proposal was lower in evaluated cost. However, based upon the combined technical/cost evaluation scores, the contracting officer decided to award the contract to SBAR and notified JWK of her intent by letter of March 24.

On March 30, JWK protested the proposed award to SBAR to the contracting officer. The contracting officer denied the protest by letter of May 25, and the contract was awarded to SBAR on June 8. On June 12, JWK filed the present protest with our Office.

The first ground for protest is that JWK's proposal offered a lower total cost-plus-fee than SBAR's proposal, and, therefore, JWK should have been awarded the contract. We do not agree.

In negotiated procurements, unless the solicitation so specifies, there is no requirement that award be based on lowest cost. Comarco, Inc., B-225504, et al., Mar. 18, 1987, 87-1 CPD ¶ 305. A procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the solicitation. Systems Eng'g Assocs. Corp., B-232597, Oct. 4, 1988, 88-2 CPD ¶ 315.

^{1/} The initial proposal of the third offeror, Western Technical Associates, was evaluated and rejected as technically unacceptable.

Here, the RFP specifically stated that technical factors were considered substantially more important than cost. The technical evaluation factors, in descending order of importance were: technical approach, personnel experience, corporate experience, and management. For evaluation purposes, cost was defined as including the cost of the basic year and both option years. The evaluation documents, which have been provided to our Office for our in camera review, show that the Navy gave the technical factors a total weight of 60 percent in the selection scheme while cost was given a weight of 40 percent. The record reveals that SBAR's technical proposal was rated as superior to JWK's technical proposal in every technical evaluation factor. The record also shows that SBAR's total evaluated cost-plus-fee was only slightly higher than JWK's total evaluated cost-plus-fee. When the weighted cost and technical scores were combined, SBAR's BAFO received the highest overall score and was selected for award. In our view, the cost/technical tradeoff was rational and consistent with the RFP's evaluation criteria, and, therefore, the contracting officer had a reasonable basis for awarding the contract to SBAR. See Comarco, Inc., B-225504, et al., supra.

JWK next alleges that procurement officials provided details from JWK's proposal to SBAR prior to submission of BAFOs. JWK has produced no evidence to support this charge, but has asked us to ascertain the truth of its accusation. See Todd Logistics, Inc., B-203808, Aug. 19, 1982, 82-2 CPD ¶ 157. We have examined the record in light of the protester's assertion, and we have found no evidence of any improper actions by agency officials.

The record shows that the technical evaluation panel was concerned that the initial proposals of JWK and SBAR were very similar in a number of respects, including similar technical approaches in portions of the proposals, identical wording in several areas, and misspelled words throughout the documents. Because of this concern, the Naval Investigative Service (NIS) was asked to investigate to ascertain if any wrongdoing or even criminal conduct had taken place. NIS investigated and found no evidence of any wrongdoing on the part of government officials.

JWK questions whether NIS's investigation was adequate, especially in view of the fact that NIS never interviewed JWK employees concerning wrongdoing or possible criminal

activities on the part of Navy procurement officials. It is not our role to determine what investigative techniques NIS should use during a criminal investigation. We point out, however, that NIS's first investigation was initiated at the request of the contracting officer based solely upon the technical evaluation panel's finding that the proposals of JWK and SBAR contained a number of unexplained similarities. We also point out that NIS did interview employees of the Navy (including the contracting officer's technical representative whom JWK suspects leaked procurement information to SBAR) as well as employees of SBAR and JWK's subcontractor (including the employees who have accused the contracting officer's technical representative of wrongdoing). There simply is nothing in the record to cause us to doubt the integrity of NIS--an investigative agency within the Navy but independent of the procurement activity--or the sufficiency of its investigation.

The Navy did discover that JWK and its subcontractor had hired five former employees of SBAR just days before initial proposals were submitted. The Navy reports that these employees had been hired by the subcontractor to write its portion of JWK's proposal, that the employees acknowledged that they had utilized information that was also used by SBAR, and that the employees had been employed by the subcontractor before they had worked for SBAR. In view of this transfer of key personnel between SBAR and JWK's subcontractor, we do not find surprising the fact that there were a number of similarities between the competing offerors' proposals. In any event, because the record contains no evidence that any procurement official gave SBAR information from JWK's proposal, the protester's bare assertion provides no basis to invalidate the award to SBAR. Id.

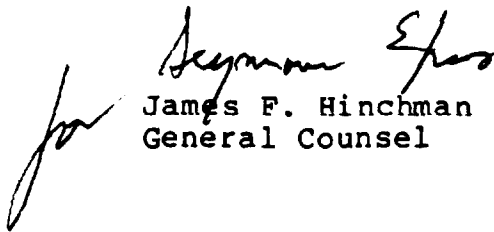
The protester next asserts that, before the present RFP was even issued, a particular evaluation panel member improperly gave SBAR a document containing information concerning, among other items, the background, statement of work and evaluation criteria for this procurement. The record does not support this allegation.

The Navy reports that the document cited by the protester, "Standard Missile Interface Control Program and Navy Special Interface Gage Program," contains general information regarding certain Navy programs, and was publicly available from a variety of sources. Nevertheless, in response to JWK's allegation that the document had been released improperly, the Navy again requested an investigation by NIS. NIS found that there was no reason to conclude that the document had been furnished improperly to SBAR.

Specifically, NIS concluded that the document was given to SBAR in connection with the issuance of a delivery order under SBAR's current contract. NIS also found that a key employee of JWK's subcontractor was formerly employed by SBAR and had access to the document while employed by SBAR.

Although JWK again challenges the adequacy of the NIS investigation, there simply is no support in the record for JWK's contention that release of the document was improper. Moreover, other than the bare assertion that it could have prepared a better technical proposal if it had had access to the document, JWK does not explain or provide any support for its argument that the document gave SBAR any unfair competitive advantage.

The protest is denied.


James F. Hinchman
General Counsel